

The 3rd June, 1987

No. 9/1/87-6Lab./3598.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of (i) Haryana Warehousing Corporation, S.C.O. 8, Sector 17, Chandigarh, (ii) District Manager, Haryana Warehousing Corporation, Panipat :—

IN THE COURT OF SHRI V. P. CHAUDHARY,  
PRESIDING OFFICER,  
LABOUR COURT, AMBALA

Reference No. 116 of 1985

SHRIMATI RAJ RANI, H. NO. 11/513, RISHI NAGAR, SONPAT AND THE MANAGEMENT OF THE (I) HARYANA WAREHOUSING CORPORATION, S.C.O. 8, SECTOR 17, CHANDIGARH, (II) DISTRICT MANAGER, HARYANA WAREHOUSING CORPORATION, PANIPAT  
Present:

Ch. Karan Singh, for workwoman.

Shri N. K. Bhardwaj, for respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Smt. Raj Rani and Haryana Warehousing Corporation, Chandigarh, to this Court. The terms of the reference are as under :

Whether termination of services of Smt. Raj Rani is just and correct, if not, to what relief is she entitled ?

Smt. Raj Rani through her statement of claim alleged that she joined service of respondent-management on 4th May, 1985,—vide appointment letter, dated 1st May, 1985 and was posted at Panipat. Her services were terminated on 13th January, 1986 in violation of provisions of section 25(F) of Industrial Disputes Act 1947 because she had completed her service more than 240 days, she prayed for her reinstatement with continuity in service and with full back wages, etc.

Respondent-management contested the dispute and contended that the reference is not

maintainable. In fact services of workwoman were never terminated at any time in fact she was revealed as per terms and conditions of her appointment letter. She never worked for 240 days. It was further contended that workwoman was employed on *ad hoc* basis for fixed period. Thereafter, regular candidates were invited from Employment Exchange, name of Smt. Raj Rani was not sponsored by the Employment Exchange, so selection was made out of the candidates who were sent by Employment Exchange and services of Smt. Raj Rani came to an end automatically.

Workwoman filed replication through which she controverted the allegations of the respondent-management and re-asserted her own claim.

On the pleadings of the parties the following issues were framed :—

#### ISSUES:

- (1) Whether termination order regarding services of Smt. Raj Rani is unjust and illegal, if so, its effect ? OPW.
- (2) Relief.

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

#### ISSUE NO. 1:

Smt. Raj Rani in support of her case, examined herself as AW-1. She stated that she joined service of respondent-management on the basis of appointment letter. Photostat copy of the same is Exhibit A-1. She was removed from service on 13th January, 1986. During this period she had been discharging the duties of an Accounts Clerk. Even after 13th January, 1986 she continue to work till the joining of the regular candidates at the assurance of Managing Director that her service period shall be continued. She also stated that at the time of terminating of her services no notice, no wages in lieu of notice period, no retrenchment compensation was paid to her. In cross-examination she admitted her application, Exhibit M-1 in which she prayed for service to Managing Director of respondent. She deposed that respondent had been causing break in her service but she had been working regularly for all the working days. She denied the suggestion that her service was less than 240 days.

Respondent-management examined MW-1 Shri Kuldip Singh Ahlawat, District Manager, Haryana Warehousing Corporation, Panipat, who deposed that Smt. Raj Rani joined on 3rd May, 1985 thereafter, she was relieved on 25th October, 1985 she was again appointed on 14th November, 1985 and was relieved on 13th January, 1986. He deposed that she worked only for 229 days out of this period she was not paid wages for those days. He further deposed that after 14th January, 1986, Smt. Raj Rani never turned up in the office nor any assurance was given to her regarding extension of her service. He stated that in June, 1985, Smt. Raj Rani was only candidate who had been working on ad-hoc basis. He cannot say how many persons have been employed by the respondent after terminating service of Smt. Raj Rani. He further deposed that he informed her that work and conduct of Smt. Raj Rani was good. He did not bring attendance register as soon as period of service of Smt. Raj Rani expired she was relieved although no such instruction was received by him from the Head Office. While relieving Smt. Raj Rani no notice, no pay, in lieu of notice period and no retrenchment compensation was paid to her. He further stated that from 14th January, 1985 to 13th January, 1986, Sundays have not been counted in her attendance days. MW-2 Shri R. L. Chopra who stated that he has brought the list of candidates who were sponsored by the Employment Exchange, name of Smt. Raj Rani does not figure in this list.

In view of the above evidence of the parties the case of Smt. Raj Rani is that she remained in the Employment of respondent-management more than 240 days while respondent-management tried to build up its case that she served the respondent-management only for 229 days. MW-1 categorically stated that Raj Rani remained in service from 14th November, 1985 up to 13th January, 1986, Sundays have not been counted while counting the service length of the workwoman. He also stated that he did not bring the attendance register for reasons best known to him. He further stated that Smt. Raj Rani had been appointed for specific periods so breaks were given in her service.

In view of the above evidence I am of the considered opinion that if service length of Smt. Raj Rani is counted from 4th May, 1985 to 13th January, 1986 total service days comes to 255. If as per statement of MW-1 that she joined on 3rd May, 1985 and then relieved in

the afternoon on 25th October, 1985 and was again joined on 14th November, 1985 in those circumstances if 13 days are made less out of 255 in these circumstances her service is left of 242 days. Smt. Raj Rani in her statement on oath also stated that after 13th January, 1986, she had been continuously attending the office till the regular casual dates joined but those days were not disclosed by workwoman. However this fact was denied by MW-1. Non-production of attendance register shows that the service length is however of 240 days or more than 240 days of the applicant.

The another evidence which was in the possession of respondent-management was that it should have produced the pay register of the applicant, on the basis of the same she received wages from the respondent-management.

Withholding of attendance register and payment rolls shows that the assertion made by Smt. Raj Rani workwoman that she remained in service of respondent-management more than 240 days is correct.

The another question which needs discussion is that there were breaks in the service of Smt. Raj Rani from time to time but in 1981 Supreme Court page 70 in a case Mohan Lal Vs. B.E.L. and in another case Santosh Gupta Vs. State Bank of India in 1980 Supreme Court page 72 it was observed that the workman who had put in more than 240 days service (although with breaks), during the period 13th July, 1973 to 24th August, 1974 was discharged on the ground that Smt. Santosh Gupta failed to pass prescribed test provided for confirmation in service.

In the above two judicial pronouncements it was observed that even though there were breaks in the service of workman but the total length of service was more than 240 days in those circumstances it was observed that the breaks in service were ineffective while counting continuous service of 240 days and similar fact is present in the case in hand.

Smt. Raj Rani was appointed by respondent-management directly on the basis of an application. No explanation is coming forward that why she was appointed directly on the basis of an simple application when the recruitment is to be made directly through Employment Exchange or through Service Selection Board, Haryana. MW-2 disclosed that this fact is in the

knowledge of Management Director of the respondent management.

Name of Smt. Raj Rani was registered with Employment-Exchange, Panipat as it has come in the evidence no requisition was sent to that Employment-Exchange while calling the name of the candidates, so the workman who had been already taken in service and had an experience was not given an opportunity for interview and service. Junior persons were selected and were given employment which is basically wrong and against the natural principle of justice.

Smt. Raj Rani served the respondent-management more than 240 days before terminating her service it was incumbent upon respondent-management to have issued notice or should have paid wages in lieu of notice period and retrenchment compensation should have also been paid to her. But these mandatory provisions were not followed by the respondent-management, so there is clear violation of provisions of section 25(F) of the Industrial Disputes Act, 1947.

The Ld. Authorised Representative of the management mainly argued that appointment of Shrimati Raj Rani was for a limited period and she was relieved when her period of service contract expired in view of newly inserted amendment 2(oo) (bb). But in that contest I would like to remark that the amendment made by the Legislature in section 2(oo) of the Act by inserting sub-clause (bb), however may not stand the test of time and might meet its water loo in near future. Because this amendment can easily be exploited by un-scrupulous employers giving rise to un-fair labour practices. Moreover this provision is also against the judgment of the Hon'ble Supreme Court namely workman of Hindustan Steel Ltd. and another Vs. Hindustan Steel Ltd. and others, 1985 Vol.1 L.L.J. Supreme Court 268 in which it was observed that:

"Let it not be forgotten that laid down by a catena of decisions that where an order caste a stigma or affects livelihood, before making the order, principles of natural justice namely a reasonable opportunity to present one's case and controvert the adverse evidence must have full play."

The Dayal Saran Vs. Union of India Hon'ble Supreme Court pointed out that an order of forfeiture of past service cannot be made without observing the principle of natural justice. In West Bengal State Electricity Board Vs. Desh

Bandhu Gosh and others, 1985 LABIC 885 it was observed that :

"The regulation is totally arbitrary and confers on the board a power which is capable of vicious discrimination. It is a naked hire and fire rule the time for banishing which altogether from employer-employee relationship is fast approaching."

In view of my above discussion and case laws referred thereto I am of the considered opinion that Smt. Raj Rani worked in the service of respondent-management more than 240 days. Her services were dispensed with without any notice, without making payment of wages, in lieu of, notice period and no retrenchment compensation was paid to her. Much emphasis were laid that her service was for a fixed period and amendment 2(oo) (bb) is applicable in her

case but in view of Hon'ble Supreme Court judgment I would like to remarks that her termination is violative to the provisions of section 25(F) of Industrial Dispute Act, 1947. So she is entitled to reinstatement with continuity in service and with full back wages. This issue is accordingly decided, in favour of, workwoman Smt. Raj Rani against the management.

Issue No. 2 :

For the foregoing reasons on the basis of my findings on issue No. 1, I order the reinstatement of workwoman with continuity in service and with full back wages, I pass award regarding the dispute between the parties accordingly.

Dated the 8th April, 1987.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

Endorsement No. 823, dated 10th April, 1987.

Forwarding (Four Copies) to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of Industrial Dispute Act, 1947.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.